

5b AO 120 (Rev. 2/09)

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court, Northern District of California, on the following  Patents or  Trademarks:

DOCKET NO. <b>CV 10-04868 LB</b>	DATE FILED <b>October 29, 2010</b>	U.S. DISTRICT COURT <b>Northern District of California, 1301 Clay Street, RM 4005, Oakland, CA 94612</b>
<b>PLAINTIFF</b> <b>ATHENA FEMININE TECHNOLOGIES</b>	<b>DEFENDANT</b> <b>DEREK WILKES</b>	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <u>7,577,476</u>		SEE ATTACHED
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		SEE ATTACHED
2		
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In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT	
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CLERK	(BY) DEPUTY CLERK	DATE
Richard W. Wiking		

Copy 1—Upon initiation of action, mail this copy to Commissioner   Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner   Copy 4—Case file copy

**COUNT ONE – DECLARATORY RELIEF**  
(As against all Defendants)

40. Plaintiff incorporates and realleges paragraphs 1-39 above.

41. There presently exists a dispute between Plaintiff Athena and Defendants as to Athena's exclusive right to own and market any product derivative of the PMT, whether known as or named the PEX, Spirit or Pelfit.

42. There further exists a dispute between Plaintiff and Defendants as to whether or not the PEX, Spirit or "Pelfit" is derivative of Athena's Personal Muscle Trainer ("PMT").

**COUNT TWO – MISAPPROPRIATION OF TRADE SECRETS**  
(As against all Defendants)

43. Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.

44. Defendants have misappropriated trade secrets belonging to Plaintiff, namely the

Confidential Information provided to Defendants in connection with the manufacture of Plaintiff's PMT, in order to produce and sell a derivative product, namely the PEX, Spirit or "Palfit".

45. In violation of California Civil Code § 3426(f), Defendants have disclosed and/or used Plaintiff's Confidential Information without the express or implied consent of Plaintiff, and having acquired the Confidential Information under circumstances giving rise to a duty to maintain its secrecy or limit its use.

46. Plaintiff seeks injunctive relief against the actual or threatened misappropriation of its trade secrets by Defendants, as well as damages, and an order requiring Defendants to turn over to Plaintiff all Confidential Information related to the PMT, the PEX, Spirit and Pelfit as well as all monies by which Defendants have been unjustly enriched through the sale of the PEX Spirit or Pelfit.

47. In addition, Plaintiff seeks punitive damages for the reason that Defendants actions are willful, malicious and oppressive, and an award of reasonable attorney's fees and costs.

**COUNT THREE – BREACH OF CONTRACT**  
(As against Defendants Wilkes, Cordell, and King Champion)

48. Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.
49. Defendant Wilkes, Cordell and King Champion have breached their Confidentiality Agreements with Plaintiff by using and disclosing the Confidential Information provided for a purpose not authorized by Plaintiff, namely the development, production and appropriation of sale of a derivative product, the PEX, Spirit or Pelfit.
50. Defendant Wilkes has breached his Confidentiality Agreement with Plaintiff by disputing Plaintiff's ownership of a derivative product, namely the PEX, Spirit or Pelfit, and by refusing to return to Plaintiff all Confidential Information and any derivative thereof, as defined by the Confidentiality Agreement.
51. Pursuant to ¶ 13 of the Confidentiality Agreement, Plaintiff is entitled to, and hereby seeks injunctive relief in addition to such other and further relief as may be proper, including monetary damages.

**COUNT FOUR – INDUCING BREACH OF CONTRACT**  
(Against Defendants Wilkes and Cordell)

52. Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.

53. Plaintiff entered into a valid contract, namely a Confidentiality Agreement with Defendant King Champion whereby King Champion agreed, among other things, not to use or disclose Plaintiff's Confidential Information to any person for any purpose except as authorized by Plaintiff.

1       54. Defendants Wilkes and Cordell had knowledge of the Confidentiality Agreement entered  
2                    into between Plaintiff and King Champion and intentionally induced King Champion to  
3                    breach that agreement by using Plaintiff's Confidential Information for the purpose of  
4                    production of the PEX, Spirit or Pelfit at their request.  
5  
6       55. In addition, Defendants, with knowledge of the Confidentiality Agreement between  
7                    Plaintiff and King Champion, induced Defendant King Champion to refuse to return to  
8                    Plaintiff, after Plaintiff's request, Plaintiff's Confidential Information in its possession.  
9  
10      56. As a proximate result of Defendants' wrongful and unjustified conduct, Plaintiff has  
11                    suffered damages, including but not limited to inability to provide its distributors and  
12                    customers with sufficient product.

13                    **COUNT FIVE – INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS**  
14                    **AND ECONOMIC ADVANTAGE**  
15                    **(Against Defendants Wilkes and Cordell)**

16       57. Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.  
17  
18       58. There exists an economic relationship between Plaintiff and King Champion on the one  
19                    hand, and also between Plaintiff and its distributors, of which Defendants Wilkes and  
20                    Cordell are aware.  
21  
22       59. Defendant Wilkes' assertion to both Defendant King Champion and Plaintiff distributors  
23                    that he is the owner of the PEX, not Plaintiff, is an intentional and wrongful act which is  
24                    designed to and has had the effect of disrupting relations between Plaintiff and its  
25                    manufacturer, King Champion, and its distributors, in each case proximately causing  
26                    economic harm to Plaintiff by significantly impacting its ability to produce the PEX or  
27                    Spirit, to sell the PEX or Spirit to and through its distributors, and by causing King  
28                    Champion to delay delivery of Plaintiff's other product, the PMT, in the hopes of

weakening Athena's financial position and reputation.

60. Defendant Cordell has, upon information and belief, acted in concert and conspiracy with Defendant Wilkes in interfering with Plaintiff's business relations and has furthered said conspiracy by engaging in the marketing of the PEX and/or Pelfit.

**COUNT SIX – UNFAIR COMPETITION**  
(Against all defendants)

61. Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.

62. By engaging in the conduct outline above, Defendants are engaged in “unfair competition” as defined by California Business and Professions Code § 17200, as including any “unlawful, unfair or fraudulent business practice”.

63. Defendant Wilkes, by asserting ownership of the PEX has delayed and/or prevented the manufacture of the product for sale by Plaintiff, by falsely claiming the right to market the product, and by refusing to provide critical product safety testing information to Plaintiff's insurance underwriter, has interfered with and diminished Plaintiff's ability to sell the PEX or Spirit product through its distributors. Defendants have also interfered with the production of Plaintiff's current PMT product by causing King Champion industries to delay its manufacture. Defendants are selling the PEX product as Pelfit on their own account or through Plaintiff's distributors, thereby negatively impacting Plaintiff's sales.

64. Pursuant to Business and Professions Code § 17203, Plaintiff seeks injunctive relief, restitution of its property and such other order or judgments as necessary to prevent Defendant's continued acts of unfair competition.

**COUNT SEVEN – PATENT INFRINGEMENT**  
(Against Defendants Wilkes, Pelfit, Cordell and King Champion)

65 Plaintiff incorporates and realleges the allegations of paragraphs 1-39 above.

- 1 66. Plaintiff designs and manufactures specialized medical devices for the diagnosis and/or
- 2 treatment of gynecological conditions in women.
- 3
- 4 67. Plaintiff has made substantial investments of money, as well as great efforts over extended
- 5 periods of time, in a search for better ways to design and manufacture health products to
- 6 diagnose and treat medical conditions in the pelvic area of adult women. These
- 7 investments in research and development have, over the years, yielded many innovations,
- 8 including the innovations disclosed and claimed in the '476 patent.
- 9
- 10 68. U.S. Patent No. 7,577,476 was duly and legally issued to Plaintiff, as assignee of the
- 11 inventor named therein, for an invention entitled "System and Method for Transducing,
- 12 Sensing, or Affecting Vaginal or Body Conditions, and/or Stimulating Perineal
- 13 Musculature and Nerves Using 2-Way Wireless Communications." A true and correct
- 14 copy of the '476 patent has been annexed hereto as Exhibit A and incorporated herein by
- 15 reference.
- 16
- 17 69. The '476 patent is valid and enforceable.
- 18
- 19 70. At all times since its original issue date, Plaintiff has been the owner of the entire right,
- 20 title, and interest in the '476 patent.
- 21
- 22 71. Defendants Wilkes, Pelfit, Cordell, and King Champion have produced, marketed and
- 23 offered for sale, the PEX product as the "Pelfit".
- 24
- 25 72. The PEX product offered for sale and to be offered for sale by Defendants uses Plaintiff's
- 26 patented technology. In particular, Defendants offering to sell, selling, or importing the
- 27 PEX product infringes the '476 patent.

1       73. Upon information and belief, Defendants' activities in connection with the PEX product  
2       have included: having the PEX product manufactured by Defendant King Champion;  
3       making presentations to others regarding the PEX product; providing technical information  
4       to King Champion to enable and induce King Champion to manufacture products that  
5       incorporate Plaintiff's patented technology; evaluating King Champion-manufactured  
6       products that are designed to incorporate Plaintiff's patented technology; and informing  
7       others that the PEX product or Pelfit is or soon will be available for delivery. Defendants  
8       continue to engage in such activities.

9  
10      74. Defendants conduct in offering to sell, or selling, and/or importing the infringing PEX  
11       product is without authorization and constitutes a violation of Plaintiff's intellectual  
12       property rights.

13  
14      75. Upon information and belief, Defendants have, and/or imminently are immediately about  
15       to infringe and/or continue to infringe one or more claims of the '476 patent by using,  
16       offering to sell, and selling (directly or through intermediaries), and importing, in this  
17       district and elsewhere in the United States, PEX products that use or embody the patented  
18       invention.

19  
20      76. Upon information and belief, Defendants also have or imminently are immediately about to  
21       contribute to the infringement of the '476 patent, and/or actively induce others to infringe  
22       the '476 patent.

23  
24      77. Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a  
25       result of Defendants' wrongful acts in an amount subject to proof at trial.

26  
27  
28

1       78. Upon information and belief, Defendants have had actual knowledge of the existence of the  
2       '476 patent from within days after it was granted.

3       79. Upon information and belief, Defendants infringement of the '476 patent has been willful  
4       and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284 and to  
5       attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

6       80. Defendants' infringement or imminent infringement of Plaintiff's exclusive rights under  
7       the '476 patent has and/or will damage Plaintiff's business, causing irreparable harm for  
8       which there is no adequate remedy at law, unless it is enjoined by this Court.

9       11       WHEREFORE, Plaintiff asks this Court to enter judgment and grant relief in its favor  
10      12      against Defendants as follows:

- 11      14      1. A declaration that Plaintiff owns and has the exclusive right to market any product  
12      15      derivative of the PMT, including the PEX, Spirit, and Pelfit;
- 13      16      2. Injunctive relief against all Defendants, including a temporary restraining order,  
14      17      preliminary and permanent injunction enjoining the manufacture, production, marketing, or  
15      18      sale by Defendants, or any of them, of any product derivative of the PMT, including the  
16      19      PEX, Spirit, and Pelfit;
- 17      20      3. For compensatory damages, according to proof;
- 18      21      4. For punitive damages;
- 19      22      5. For reasonable attorneys fees and costs;
- 20      23      6. On Count Seven for Patent Infringement:
  - 21      26      A. An adjudication that Defendants have infringed and continue to infringe the '476  
22      27      patent;

- B. An accounting of all damages sustained by Plaintiff as a result of Defendants' acts of infringement;
- C. An award to Plaintiff of actual damages adequate to compensate Plaintiff for Defendants' acts of patent infringement;
- D. An award to Plaintiff of enhanced damages, up to and including trebling of Plaintiff's damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement;
- E. An award of Plaintiff's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- F. A grant of a preliminary and a permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants and their agents, servants, employees, principals, officers, attorneys, successors, assignees, and all those in active concert or participation with him, including related individuals and entities, from any acts of (1) infringement, (2) contributory infringement, and (3) active inducement to infringe with respect to the claims of the '476 patent.

IV. DEMAND FOR JURY TRIAL.

Plaintiff demands a jury for the trial of this action.

Dated: October 27, 2010

**HENNEFER, FINLEY & WOOD, LLP**

By Steven C. Finley  
Steven C. Finley  
Attorney for Plaintiff Athena Feminine  
Technologies Inc.

## **EXHIBIT A**



US007577476B2

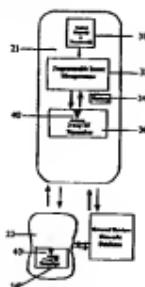
(12) **United States Patent**  
Hochman et al.

(10) Patent No.: US 7,577,476 B2  
(45) Date of Patent: Aug. 18, 2009

(54) SYSTEM AND METHOD FOR TRANSDUCING, SENSING, OR AFFECTING VAGINAL OR BODY CONDITIONS, AND/OR STIMULATING PERINEAL MUSCULATURE AND NERVES USING 2-WAY WIRELESS COMMUNICATIONS		(56) References Cited
(75) Inventor: Joel S. Hochman, Houston, TX (US); George Sarkis, Ondra, CA (US)		U.S. PATENT DOCUMENTS 4,515,187 A 5/1985 Hochman
(73) Assignee: Athena Feminine Technologies, Inc., Ondra, CA (US)		(Continued)
( *) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 300 days.		FOREIGN PATENT DOCUMENTS
(21) Appl. No.: 10/007,393		DE 2941363 A 4/1981
(22) Filed: Oct. 26, 2001		(Continued)
(65) Prior Publication Data		OTHER PUBLICATIONS
US 2003/0083590 A1 May 1, 2003		McCreech et al "Vaginal Temperature Sensing Using UHF Radio Telemetry", Med. Eng. Phys. vol. 18, No. 2, pp. 110-114, (1996).*
(51) Int. Cl. A61B 5/04 (2006.01) A61B 5/09 (2006.01) A61B 5/05 (2006.01) A61B 18/00 (2006.01) A61B 5/103 (2006.01) A61B 5/117 (2006.01) A61F 2/09 (2006.01) A61B 17/43 (2006.01) A61D 7/00 (2006.01) A61F 5/00 (2006.01) A61N 1/00 (2006.01)		(Continued)
(52) U.S. CL ..... 600/546; 600/300; 600/301; 600/304; 600/372; 600/373; 600/547; 600/549; 600/551; 600/573; 600/587; 600/591; 600/29; 500/38; 600/33; 607/39; 607/40; 607/41		Primary Examiner—Max Hindenburg Assistant Examiner—Jeffrey G Hochman (74) Attorney, Agent, or Firm—Robert W. Becker; Robert Becker & Assoc.
(58) Field of Classification Search ..... 600/300-301; 600/304; 372, 373, 546, 547, 549, 551, 61; 600/587; 591, 28, 38, 33; 607/20, 61		(57) ABSTRACT
<p>A system and method are provided for transducing vaginal conditions, affecting vaginal or body conditions, and/or stimulating perineal musculature and nerves. A separate, portable, non-implanted intravaginally containable combination probe and transceiver is provided that can sense vaginal conditions, can deliver signals or medication, and/or can stimulate perineal musculature and nerves. This probe unit is provided with 2-way wireless communication for transmitting information that is transduced and for receiving control and programming signals. In addition, a separate combination controller and transceiver is provided for wirelessly sending signals to the probe unit and for receiving signals therefrom. A real time wireless signal feedback loop is thus provided between the controller and the probe and/or external devices, networks and databases.</p>		

See application file for complete search history.

21 *Claims of Domestic Effects*



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9

10

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11  
12 ATHENA FEMININE TECHNOLOGIES  
13 INC.

Case No.: 1

14 Plaintiff,  
15 vs.  
16

17 DEREK WILKES, URSULA WILKES,  
18 PELFIT TECHNOLOGIES LLC, DRAGON  
19 VENTURES LTD., MORTON CORDELL,  
20 individually and dba SILK ROAD  
21 ASSOCIATES LLC, SIMON FAN, KING  
22 CHAMPION (HONG KONG) LTD, and  
23 YIELDING LIMITED HONG KONG.

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES  
DEMAND FOR JURY TRIAL

24 Defendants.

25

26 Plaintiff, Athena Feminine Technologies Inc. ("Athena") alleges as follows:

27

**I. PARTIES**

28 1. Athena is a Delaware corporation, headquartered in Emeryville, California. Athena  
29 develops health products to diagnose and treat medical conditions in the pelvic area of  
30 adult women.

ORIGINAL  
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RICHARD W. WERNICK, CLERK  
NORTHERN DISTRICT OF CALIFORNIA  
E-filing

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Definition of "implant" from Stedman's Medical Dictionary, 27th Edition, (2005) \*

\* cited by examiner

FIG 1

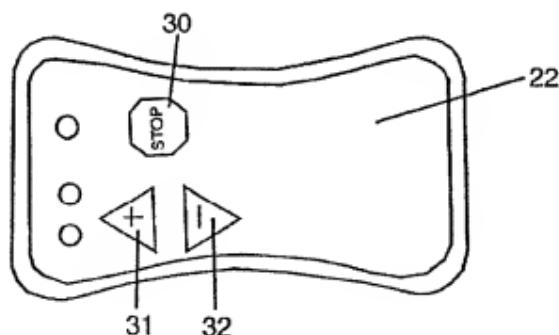


FIG 2

FIG 3

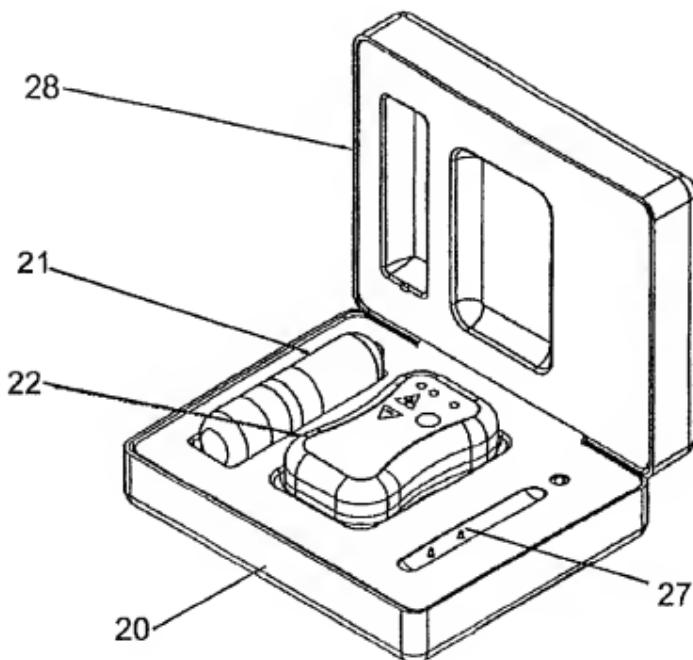


FIG. 4

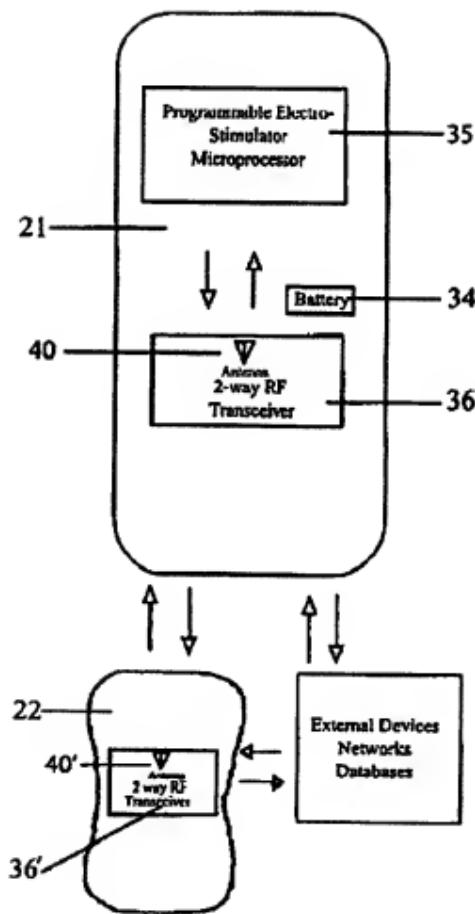


FIG 5

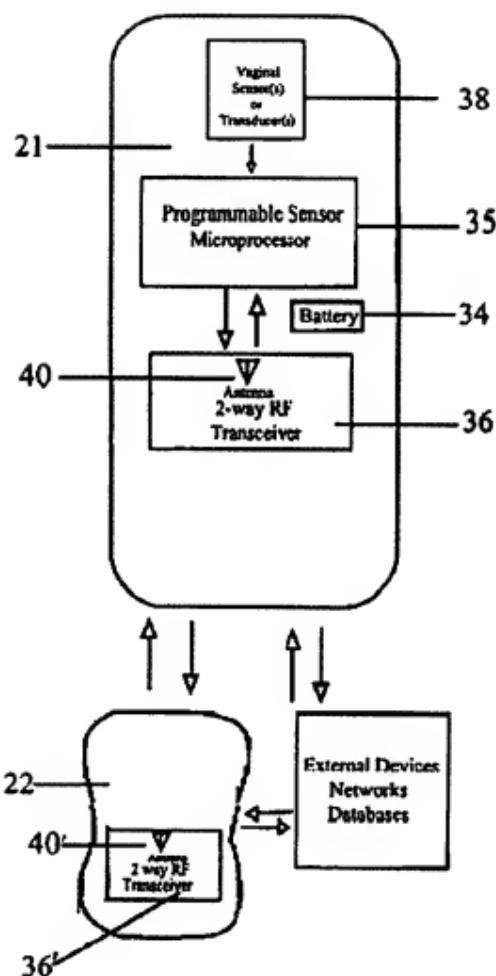
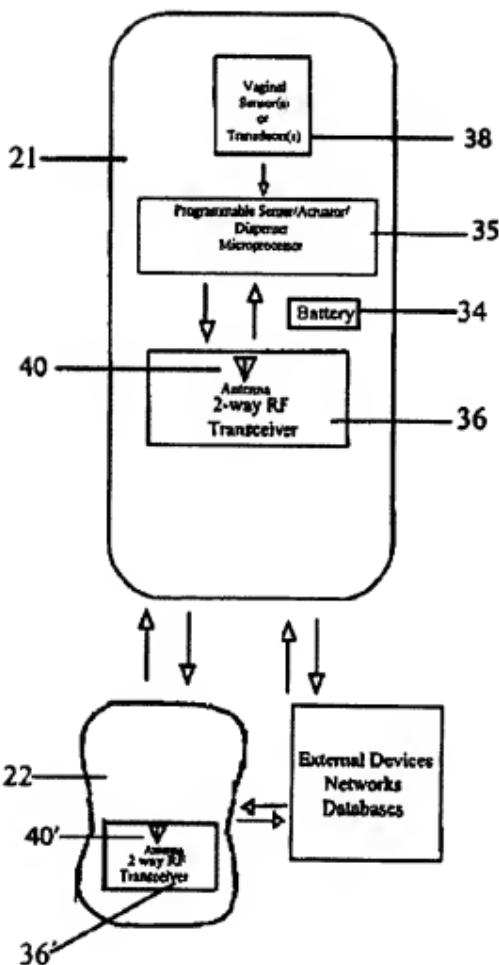


FIG 6



**SYSTEM AND METHOD FOR  
TRANSDUCING, SENSING, OR AFFECTING  
VAGINAL OR BODY CONDITIONS, AND/OR  
STIMULATING PERINEAL MUSCULATURE  
AND NERVES USING 2-WAY WIRELESS  
COMMUNICATIONS**

**BACKGROUND OF THE INVENTION**

The present invention relates to a system for transducing vaginal conditions, affecting vaginal or body conditions and/or stimulating perineal musculature and nerves. The present invention also relates to a method for accomplishing these functions.

U.S. Pat. No. 4,515,167, Hochman, discloses a self-contained stimulation device that was programmable, prior in use, using control buttons on the surface of the device itself. Signals could also be emitted from the device to an external unit for processing. The drawbacks of this known device include the inability to alter its operation during use. In addition, this known device is not very ergonomic due in particular to the surface control buttons that are necessarily present on the device for its programming and operation.

Other vaginally insertable probes are also known, such as the fertility probes of U.S. design Pat. No. 393,311 and U.S. Pat. No. 5,916,173, both to Karsner. U.S. Pat. No. 4,753,247, Kiersner, discloses a probe that is connected by wires to an external housing containing batteries and electronic circuitry.

Prior known devices fail to provide a system that can provide stimulation, deliver medication, and/or obtain physiological data intravaginally, via a wireless 2-way communication and in real time.

It is therefore an object of the present invention to provide an ergonomic system and method that will allow, in a wireless manner and in real time, the transducing of vaginal conditions, the affecting of vaginal or body conditions, and the stimulation of perineal musculature and nerves in the human or other mammalian vagina, and in particular allows for real time remote control and/or programming of the intravaginally contained probe/transceiver unit.

**BRIEF DESCRIPTION OF THE DRAWINGS**

This object, and other objects and advantages of the present invention, will appear more clearly from the following specification in conjunction with the accompanying schematic drawings, in which:

FIGS. 1 and 2 show the probe/transceiver and the controller/transceiver units respectively of the system of the present invention;

FIG. 3 shows the probe and controller units in a case; and

FIGS. 4-6 diagrammatically show the micro circuitry for various exemplary embodiments of the inventive probe and controller units.

**SUMMARY OF THE INVENTION**

The system of the present invention comprises: a separate, portable, non-implanted, intravaginally containable (i.e. in situ yet removable) combination probe and transceiver that is provided with means for sensing vaginal conditions, delivering signals or medication, and/or stimulating perineal musculature and nerves, wherein such probe unit is provided with 2-way wireless real time communication means for transmitting information that is transduced and for receiving control and programming signals; and a separate combination controller and transceiver that is provided with wireless means

for sending signals to the probe unit and for receiving signals therefrom, wherein a wireless signal feedback loop is provided between the controller and probe units and external devices, networks and databases.

5 The combination probe and transceiver is, in particular, a pre-programmed unit. The programming of this unit can, however, be altered. As indicated, 2-way communication is provided between the probe unit and the controller unit, which can be a hand-held unit, but could alternatively or in addition be a PC or other similar computer unit.

The probe of the inventive system contains no wires or similar external means or surface controls, and is therefore comfortable to use.

When the probe unit of the inventive system is used as a stimulation unit, women are provided a safe, easy and convenient way to strengthen and tone their pelvic muscles without professional intervention or special training.

In addition, or alternatively, the probe unit of the inventive system can be provided with solid state transducers or other sensor means that would be able to identify, for example, sexually transmitted pathogens, cancerous changes in the cervix and vaginal environment, metabolic abnormalities, physiological markers of the fertility cycle, and other physiological information. It may also be possible in this way to identify diseases by DNA sequences or by disease-specific molecular odors. The inventive system thus affords the ability of being able to provide the earliest possible diagnosis and treatment of pathological conditions, since it is now possible with the inventive system to obtain intracorporeal physiological information without the need for parental or invasive sampling. In other words, physiological information can be wirelessly tracked and monitored, allowing observation and supervision of metabolic and fertility activities, among others. This can be done from a remote site, since the diagnostic data can be wirelessly transmitted to local hubs, local area networks, personal computers, and the internet. Thus, the inventive system can provide sophisticated diagnostic data to the user, to her physician, and to internet-hosted diagnostic services. Of particular significance is that this transfer of information is accomplished in real time.

Further specific features of the present invention will be explained in detail subsequently.

**DESCRIPTION OF PREFERRED  
EMBODIMENTS**

Referring now to the drawings in detail, the inventive system, which is designated generally by the reference numeral 20 (FIG. 3), essentially comprises two separate straightforward, self-contained units, namely a combination probe and transceiver 21 and a combination controller and transceiver 22. The required components of these units are integrated and where appropriate, sealed into these two units. The bodies of the units 21,22 are made of a plastic, such as those approved for medical use by the Food and Drug Administration. An example of such a plastic is medical grade level polycarbonate.

Although, as indicated previously, the inventive system 20 has numerous applications, including sensing or transducing vaginal conditions, affecting vaginal or body conditions, and/or stimulating perineal musculature and nerves, the system will now be explained in conjunction with use as a stimulation system.

When the system 20 is used as a stimulation system, the combination probe and transceiver unit is characterized as a stimulator unit. In one specific embodiment of the present invention, such a stimulator unit is less than 1 inch in diameter

and less than 4 inches in length. The end 24 of the unit 21 is rounded to facilitate vaginal insertion. The opposite end of the unit can be provided with, for example, an eyelet 25 to which a cord or similar device can be attached to facilitate removal of the reusable unit. The body of the unit is provided with at least one electrode ring 26 (two such rings are shown in the embodiment illustrated in FIG. 1), with these electrode rings being flush with the outer surface of the unit. The electrode rings 26 are designed to deliver electrical pulses to the muscles and/or nerves of the pelvic floor, and are preferably metallic rings, although they could also be made of non-metallic conducting material such as doped silicon. The stimulator unit 21 is furthermore provided with a microprocessor, a radio transmitter and a receiver mounted on a circuit board, an antenna and a sealed battery, as will be discussed in detail subsequently.

The operation of the combination probe and transceiver in its function as a stimulator unit will now be described by way of example. To begin a session, a woman would remove the hand-held combination controller and transceiver (the control unit) 22 and the stimulator unit 21 from the holder or case 28 (see FIG. 3), which also includes a tester 27 for the probe or stimulator unit. The stimulator unit 21 is then inserted into the vagina. The stimulator unit 21 can be turned on automatically at a low level when it is removed from the case 28; this can be accomplished, for example, either by a signal from the control unit 22 or can be triggered by a non-illustrated magnet located in the case 28. Although automatic powering up is preferred, the stimulator unit 21 can also be turned on manually using the on/off button 30 of the control unit 22.

The stimulator unit 21 can operate entirely automatically by being preprogrammed. For example, the unit can start at a low level of about 2 volts, can hold this voltage for approximately 30 seconds or any other desired period of time, and can then automatically ramp up to, for example, 5 volts. The stimulator unit 21 could also be operated manually by the control unit 22, or the control unit could be used to override the programmed stimulator unit 21. For example, the hand-held control unit 22 can be used to increase the stimulation strength in small steps until a user feels the muscles contract. This would be accomplished by using the Increase button 31. Should the woman feel any discomfort, she can decrease the strength of stimulation by pushing the Decrease button 32, or can turn the system off by pushing the OFF button 30. The system can be programmed to run for a specified period of time, for example fifteen minute cycles, after which it will automatically shut off. The stimulator unit 21 can then be removed.

During a session, which, as indicated above, could run for approximately 15 minutes, the stimulator unit 21 is programmed to follow a pattern of several stimulation cycles, each of which is followed by a rest period with a repeat of the set of stimulation cycles and rest periods. The stimulation patterns are the well known Kegel patterns. The stimulator unit 21 can be programmed so that it will automatically ramp up to the setting of a previous use; in other words, the stimulator unit and/or the control unit 22 is provided with a memory.

To accomplish the various functions of the system 20, namely of the control unit 22 and a stimulator or combination probe and transceiver unit 21, these units are provided with a number of components (see FIG. 4). In particular, the stimulator unit 21 and control unit 22 respectively include a battery 34, a microprocessor 35, and a radio transmitter and receiver, or preferably a transceiver 36, 36' which includes an antenna 40, 40'. The radio transmitters and receivers, or transceivers, of the control unit 22 and of the probe unit 21 are miniature radio transceivers of the same low power class as of the known remote keyless locking devices used in automobiles. The programmable microprocessors of the units are

designed to receive signals from the other unit and to deliver signals thereto, all in a wireless signal feedback loop, which may be closed or interactive. By way of example, electrical stimulation pulses can be delivered to the penile musculature via the aforementioned electrode rings 26.

The control unit 22 and the probe unit 21 can also be provided with wireless means to transmit signals to or receive signals from external devices, networks or databases, including a PC which may be located in a doctor's office, thereby facilitating data transmission and analysis.

It should also be noted that although the control unit 22 is preferably a hand-held unit, it could also be an appropriately programmed and equipped PC or the like.

As indicated above, the combination probe and transceiver unit 21 can be provided with means, such as one or more sensors with appropriate circuitry, for transducing vaginal conditions, delivering signals or medication, and/or stimulating penile musculature and nerves. For this purpose, the combination probe and transceiver 21 is provided with the 2-way wireless communication means 36 for transmitting transduced information to the control unit 22, external devices, networks or databases and for receiving control and programming signals therefrom. Similarly, the control unit or combination controller and transceiver 22 is provided with wireless means, such as a transceiver 36', for sending wireless signals to the unit 21 and for receiving wireless signals therefrom. Thus, a wireless signal feedback loop is provided between the control unit 22 and the probe unit 21. Further inventive embodiments are illustrated in FIGS. 5 and 6.

In particular, the combination controller and transceiver 22 can include means for altering the operational settings of the probe unit 21. The combination probe and transceiver 21 can be provided with sensing or transducing means 38 in the form of a muscle contraction sensor, and the unit 21 can also be provided with medication delivery means. In addition, the control unit 22 can be provided with means for altering stimulation signal levels and/or medication delivery signals.

The combination probe and transceiver unit 21 can also be provided with stimulating means (as in the embodiment of FIG. 4), which can be programmed to provide increasing stimulation and/or medication over a given period of time. The stimulating means can include means for automatic adjustment of stimulation levels in response to sensed muscle contractions and/or changes in the vaginal environment. Such stimulating means can be remotely adjustable, for example from the control unit 22 or from another source.

The combination probe and transceiver unit 21 can also be provided with means for sampling cervical fluid, and/or means for sensing temperature, pH, secretion viscosity, vaginal pathogens and atypical cervical cells. The various sensors and transducers can be provided at any suitable location on the probe as long as the ergonomic character of the probe is maintained. Where appropriate, the sensors/transducers could even be in the form of the electrode rings 26.

As indicated previously, the combination probe and transceiver unit 21 is a sealed unit.

The present invention is, of course, in no way restricted to the specific disclosure of the specification and drawings, but also encompasses any modifications within the scope of the appended claims.

#### We claim:

1. A system for stimulating pelvic muscles and/or nerves in a mammal, comprising:  
a portable probe unit, said probe unit comprising a substantially cylindrical body having a substantially smooth and substantially sealed outer surface with a rounded end and so dimensioned as to permit comfortable and repeated insertion into, removal from, and containment entirely within a mammal's vagina; substantially annular means substantially flush with the outer surface of the

body of the probe unit and adapted to deliver electrical pulses, a programmable microprocessor, memory, a battery, and two-way communication means with antenna and adapted to both transmit signals to a controller unit and receive signals from said controller unit wirelessly and in real time, and

the controller unit comprising two-way communication means adapted to both receive signals from said probe unit and transmit signals to said probe unit wirelessly and in real time, wherein said signals to said probe unit comprise control and programming signals acting as a feedback loop configured to start, stop, and/or alter the activity of the insulative means of the probe unit, either automatically or manually, for stimulating pelvic muscles and/or nerves in a mammal.

2. A system according to claim 1, said probe unit and/or said controller unit further comprising means for transmitting signals to and/or receiving signals from an external device, network, and/or database, wirelessly and in real time.

3. A system according to claim 1, wherein said controller unit is provided with memory.

4. A system according to claim 1, wherein said probe unit is adapted to be programmed to start and/or stop delivery of electrical pulses after a predetermined period of time.

5. A system according to claim 1, wherein said probe unit is adapted to be programmed to deliver cycles of alternating electrical pulses and rest periods.

6. A system according to claim 1, wherein said probe unit is adapted to be programmed to deliver electrical pulses of varying strengths.

7. A system according to claim 1, said probe unit further comprising means for sensing a vaginal condition.

8. A system according to claim 7, wherein said probe unit is adapted to be programmed to adjust its delivery of electrical pulses in response to a sensed vaginal condition.

9. A system according to claim 1, wherein said probe unit is adapted to deliver medication.

10. A system according to claim 1, said probe unit further comprising means for facilitating removal of the probe from a mammal's vagina.

11. A system according to claim 1, wherein said probe unit is less than one inch in diameter and less than four inches in length.

12. A system according to claim 1, wherein said probe unit and said controller unit are adapted to be held together, and wherein separation of said probe unit and said controller unit causes said probe unit to turn on.

13. A system according to claim 1, further comprising a tester for said probe unit.

14. A system according to claim 13, further comprising a holder adapted to hold said probe unit, said controller unit, and said tester.

15. A system according to claim 1, wherein said controller unit is adapted to be hand-held.

16. A system according to claim 1, wherein said controller unit is adapted to permit manual operation and control of said probe unit.

17. A system according to claim 1, wherein said means of said controller unit for wirelessly altering integrates a battery, transceiver, antenna, memory and a microprocessor.

18. A system according to claim 1, wherein said probe unit contains no surface controls.

19. A system according to claim 1, wherein said controller unit also includes, integrated with said two-way communication means, a programmable microprocessor, battery and antenna.

20. A system according to claim 1, wherein said microprocessor of said probe unit is a programmable microprocessor.

21. A system according to claim 1, wherein said two-way communication means of said probe unit and said controller unit are in the form of transceivers.

\* \* \* \*

## **EXHIBIT B**

- 1       2. Athena is and at all material times has been the developer and owner of the Pelvic Muscle
- 2       Trainer ("PMT"), a wireless electrical stimulation product developed to treat and prevent
- 3       female incontinence.
- 4       3. In 2001, Athena applied for a U.S. patent for its technology contained in the PMT which
- 5       was granted in August 2009, patent number 7,577,476, attached hereto as Exhibit A.
- 6       4. Athena has also applied for patent protection for the PMT in the European Union (EU),
- 7       patent application number 02784285.5, in China – patent number ZL-02825958.0, in Israel
- 8       patent application number 161,563, in South Korea – patent number 7006163/2004, in
- 9       Canada – patent application number 2,463,450, in Mexico – patent number 276190, in
- 10       Hong Kong – patent number HK1071283, in Japan – patent number 4365322, in India –
- 11       patent number 238526, in Brazil – patent application number p10213537-0, and in
- 12       Australia – patent application number 2002348070.
- 13       5. Defendant Derek Wilkes ("Wilkes") is an individual formerly resident in Santa Rosa,
- 14       California and now believed to be a citizen of and resident in the State of Arizona, who at
- 15       various times has provided engineering and product development services to Athena
- 16       pursuant to a written "Confidentiality Agreement". Defendant Ursula Wilkes is the wife of
- 17       Derek Wilkes.
- 18       6. Pelfit Technologies LLC ("Pelfit") is an Arizona-based company operated by Defendant
- 19       Wilkes. The members of Pelfit are Derek and Ursula Wilkes.
- 20       7. Defendant Morton Cordell ("Cordell") is an individual resident in Santa Rosa, California, a
- 21       citizen of the State of California, who, until in or about April 2009 was a marketing
- 22       consultant for Plaintiff Athena and who also entered into a "Confidentiality Agreement"
- 23       with Athena on the same terms as Defendant Wilkes.
- 24
- 25
- 26
- 27

# Athena Feminine Technologies

## CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into, as of 4/17/04, 2004 ("Effective Date"), by and between Athena Feminine Technologies, Inc. ("Company", having a principal place of business at 179 Moraga Way, Orinda, CA 94563 and Delaware, U.S.A. a(n) y)<sup>1</sup> individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check appropriate box) of the state of CA have a principal place of business at 3593 Park Hill Rd, San Jose, CA 95120 ("Recipient")

1. **Definition of Confidential Information.** "Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, invention, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents and formulae related to the current, future and proposed products and services of Company. "Confidential Information" includes, without limitation, Company's respective information concerning research, experimental work, development, design details and specification, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to Company or Recipient in the course of Company's business.
2. **Nondisclosure and Nonuse Obligations.** Recipient agrees that Recipient will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except to the extent necessary for internal evaluation in connection with negotiations, discussions, and consultations with personnel or authorized representatives of Company and for any other purpose Company may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations or agreements in progress between the parties shall not be released to any form of public media without the prior written approval of Company. Recipient agrees that Recipient shall treat all Confidential Information of Company with the same degree of care as Recipient accords Recipient's own confidential Information, but in no case less than reasonable care. If Recipient is not an individual, Recipient agrees that Recipient shall disclose Confidential Information of Company only to those of Recipient's employees who need to know such information and certifies that such employees have previously agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and condition applicable to Recipient under this Agreement. Recipient will immediately give notice to Company of any unauthorized use or disclosure of the confidential Information. Recipient agrees to assist Company in remediying any such unauthorized use or disclosure of the Confidential Information.
3. **Exclusions from Nondisclosure and Nonuse Obligations.** Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations"), with respect to any portion of Confidential Information, shall not apply to any such portion that Recipient can document either (a) was in the public domain at or subsequent to the time such portion was communicated to Recipient by Company through not fault of Recipient; (b) was rightful in Recipient's possession free of any obligation of confidence at or subsequent to the time such portion was communicated to Recipient by Company; or (c) was developed by employees or agents of Recipient independently of and with reference to any information communicated to Recipient by Company. A disclosure of any portion of Confidential Information, either (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, the Recipient shall provide prompt prior written notice thereof to Company to enable Company to seek a protection order or otherwise prevent such disclosure.
4. **Ownership and Return of Confidential Information and Other Materials.** All confidential Information and any Derivatives thereof whether created by company or Recipient, remain the

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property of company and no license or other rights to Confidential Information or Derivations is granted or implied hereby. For purpose of this Agreement, "Derivatives" shall mean: (a) for copyrighted or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. Recipient hereby does and will assign to Company all of Recipient's rights, title in interest and interest in and to the Derivatives. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, design lists and all other tangible media of expression) furnished to Recipient by Company shall remain the property of Company. At Company's request and not later than five (5) days after such request, Recipient shall destroy or deliver to Company, at Company's options, (a) all material furnished to Recipient by Company, (b) all tangible media of expression in Recipient's possession or control which incorporate or in which are fixed an Confidential Informants, and (c) written certification of Recipient's compliance with Recipient's obligations under this sentence.

5. **No Warranty.** All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or performance.
6. **No Export.** Recipient will not export, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing any such data to any country for with the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
7. **Term.** This Agreement shall govern all communication for Company to Recipient that are made during the period from the Effective Date to the date on which either party receives from the other party written notice that subsequent communications shall not be so governed, provided, however, that Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations") with respect to Confidential Information of Company which Recipient has previously received shall continue in perpetuity unless terminated pursuant to Paragraph 3 ("Exclusions from Nondisclosure and Nonuse Obligations").
8. **No Assignment.** Recipient shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Company
9. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or facsimile transmissions, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mails, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may specify in writing.
10. **Governing Law and Forum: Legal Fees.** This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California; as such laws are applied to agreements entered into to be performed entirely with California between California residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement, except that in action seeking to enforce any order or any judgment of such federal or state courts located in California, such personal jurisdiction shall be nonexclusive. If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive such prevailing party's reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which such prevailing party may be entitled.

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11. **Severability.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provisions shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected or impaired thereby.
12. **Waiver; Amendment; Modification.** No term or provision hereof will be considered waived by Company, and no breach excused by Company, unless such waiver or consent is in writing signed by Company. The waiver by Company of, or consent by Company to, a breach, of any provision of this Agreement by Recipient shall not operate or be construed as a waiver, of consent to, or excuse of any other or subsequent breach by Recipient. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties in writing.
13. **Injunctive Relief.** A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law, and Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).
14. **Entire Agreement** This Agreement constitutes the entire agreement with respect to the confidential information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"Company"

By:



Name:



Title:

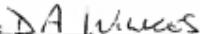


"Recipient"

By:



Name:



Title:



## **EXHIBIT C**

## Athena Feminine Technologies

### CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into, as of April 20th, 2004 ("Effective Date"), by and between Athena Feminine Technologies, Inc. ("Company"), having a principal place of business at 179 Moraga Way, Orinda, CA 94563 and King Champion (HK), an individual, a partnership, a limited liability partnership, a corporation, a limited liability company (check appropriate box) of the state of  , have a principal place of business at Unit 804, 9 Wing Hong street, Cheung Sha Wan Kowloon, HK ("Recipient")

- 1. Definition of Confidential Information.** "Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, invention, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents and formulas related to the current, future and proposed products and services of Company. "Confidential Information" includes, without limitation, Company's respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to Company or Recipient in the course of Company's business.
- 2. Nondisclosure and Nonuse Obligations.** Recipient agrees that Recipient will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except to the extent necessary for internal evaluation in connection with negotiations, discussions, and consultations with personnel or authorized representatives of Company and for any other purpose Company may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations or agreements in progress between the parties shall not be released to any form of public media without the prior written approval of Company. Recipient agrees that Recipient shall treat all Confidential Information of Company with the same degree of care as Recipient accords in Recipient's own confidential information, but in no case less than reasonable care. If Recipient is not an individual, Recipient agrees that Recipient shall disclose Confidential Information of Company only to those of Recipient's employees who need to know such information and certifies that such employees have previously agreed, whether as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and condition applicable to Recipient under this Agreement. Recipient will immediately give notice to Company of any unauthorized use or disclosure of the confidential information. Recipient agrees to assist Company in remedying any such unauthorized use or disclosure of the Confidential Information.
- 3. Exclusions from Nondisclosure and Nonuse Obligations.** Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations"), with respect to any portion of Confidential Information, shall not apply to any such portion that Recipient can document either (a) was in the public domain at or subsequent to the time such portion was communicated to Recipient by Company through no fault of Recipient; (b) was rightful in Recipient's possession free of any obligation of confidence at or subsequent in the time such portion was communicated to Recipient by Company; or (c) was developed by employees or agents of Recipient independently of and with reference to any information communicated to Recipient by Company. A disclosure of any portion of Confidential Information, either (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, the Recipient shall provide prompt prior written notice thereof to Company to enable Company to seek a protection order or otherwise prevent such disclosure.
- 4. Ownership and Return of Confidential Information and Other Materials.** All confidential Information and any Derivatives thereof whether created by company or Recipient, remain the property of company and no license or other rights to Confidential Information or Derivatives is

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granted or implied hereby. For purpose of this Agreement, "Derivatives" shall mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon, and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. Recipient hereby does and will assign to Company all of Recipient's rights, title in interest and interest in and to the Derivatives. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists and all other tangible media of expression) furnished to Recipient by Company shall remain the property of Company. At Company's request and not later than five (5) days after such request, Recipient shall destroy or deliver to Company, at Company's options, (a) all material furnished in Recipient by Company, (b) all tangible media of expression in Recipient's possession or control which incorporate or in which are fixed an Confidential Informants, and (c) written certification of Recipient's compliance with Recipient's obligations under this sentence.

5. **No Warranty.** All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or performance.
6. **No Export.** Recipient will not export, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing any such data to any country for with the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
7. **Term.** This Agreement shall govern all communication for Company to Recipient that are made during the period from the Effective Date on the date on which either party receives from the other party written notice that subsequent communications shall not be so governed, provided, however, that Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations") with respect to Confidential Information of Company which Recipient has previously received shall continue in perpetuity unless terminated pursuant to Paragraph 3 ("Exclusions from Nondisclosure and Nonuse Obligations").
8. **No Assignment.** Recipient shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Company.
9. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telexcopy or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mails, return receipt requested, upon verification of receipt. Notice shall be sent to the addressee set forth above or to such other address as either party may specify in writing.
10. **Governing Law and Forum/ Legal Fees.** This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the state of California; no such laws are applied to agreements entered into to be performed entirely with California between California residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement, except that in action seeking to enforce any order or any judgment of such federal or state courts located in California, such personal jurisdiction shall be nonexclusive. If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive such prevailing party's reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which such prevailing party may be entitled.
11. **Severability.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provisions shall be deemed intended to achieve as nearly as possible the

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same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected or impaired thereby.

12. **Waiver, Amendment, Modification.** No term or provision hereof will be considered waived by Company, and no breach excused by Company, unless such waiver or consent is in writing signed by Company. The waiver by Company of, or consent by Company in, a breach, of any provision of this Agreement by Recipient shall not operate or be construed as a waiver, of consent to, or excuse of any other or subsequent breach by Recipient. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties in writing.
13. **Injunctive Relief.** A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law, and Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).
14. **Entire Agreement.** This Agreement constitutes the entire agreement with respect to the confidential information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"Company"

---

By \_\_\_\_\_

"Recipient"



---

KING CHAMPION (HONG KONG) LTD.

By \_\_\_\_\_

Name: \_\_\_\_\_

SIMON FAN

Title: \_\_\_\_\_

Title: DIRECTOR

## **EXHIBIT D**



Derek Wilkes  
Morton Cordell

November 14, 2008

Derek and Morton,

Thanks for taking the time to meet yesterday. We all felt that it was an extremely positive day, and I will do my best to summarize the output in the paragraphs that follow. I believe we came away with five key action items on Thursday:

1. I'll be making significant changes to the Athena Management Structure
  - a. From now on, Morton, Derek, and Simon will interact directly with me
  - b. We will be appointing a new Chairman of the Board, and George Sarkis will no longer serve as COO or be managing European operations
  - c. We are currently seeking to replace 1-2 current Board members
2. We will form an Executive Committee composed of representatives from each functional area that will meet monthly. One of the first priorities of the Executive Committee will be to update Athena's current business plan to reflect our new common goals and move Athena forward
3. We will immediately move Athena's operations into a corporate office environment.
4. We will seek a new interim round of funding of at least \$650,000 to close within the next 6-7 months to support critical activities:  
As soon as possible, we will
  - a. Increase the promotional activities in Europe (to achieve sales of 1,000 units per month)
  - b. Fund the US Clinical Trial
  - c. Execute US promotional and educational activities
  - d. Fund the introduction of the PEX in Europe in 2009 and development of new products
  - e. Fund outside regulatory and legal consultants
5. Derek Wilkes will continue as Athena's engineer of record, and will assume a larger role to oversee product development activities. If Athena should acquire an additional

product(s). Derek will oversee any necessary design/manufacturing programs that Athena undertakes related to those products. Derek will continue his current monthly consultant fee, but will also be listed as the inventor of record of the next-generation PMT product known as the "PEX". The PEX will be Athena's product, but Athena agrees to pay Derek a royalty for the sale of each PEX. The royalty structure will be

\$10/unit for the first 10,000 units sold  
\$7.50/unit for the units 10,001 to 25,000  
\$5/unit thereafter

In addition, Derek will receive a cash bonus upon the following milestones:

\$25,000 when sales of the PMT and PEX reach 1,000 units per month for two (2) consecutive months.

\$25,000 when sales of the PEX reach 1,000 units per month for two (2) consecutive months.

\$25,000 upon the launch of any new Athena product for which Derek leads the design. If Derek leads the design and manufacturing efforts of a new product, he will also be entitled to receive some royalties (to be determined via discussions between Derek and Athena management).

Derek's current shares in Athena will remain in effect, and he will receive a new option grant of 25,000 shares, subject to the terms and conditions of that grant.

If Athena Feminine Technologies, Inc. ceases operations, or chooses to no longer market the PEX, then marketing rights for the PEX will revert back to Derek.

Concerning the current S3 version of PMT and any subsequent versions or designs; all design elements, including drawings, plans, blueprints, software, or code are the property of Athena, and upon request, will be furnished to Athena FT by Derek.. In the future, if King Champion chooses to no longer produce the Athena PMT or the PEX, Derek will make his best effort to help Athena identify an alternate manufacturer and transition the technology to that facility.

6. Morton Cordell will report directly to Dave Berryman at Athena, and will continue to orchestrate European activities. Of course these activities must be consistent with Athena's overall corporate goals, objectives, and financial situation. Until additional funding arrives, it will be necessary for Europe to continue to fund some US activities, and to repay loans to the Company that provide essential inventory to Europe. Along with the increased autonomy, the European team will also have to assume increased P&L responsibility. Thus commissions will be paid based upon actual payment received by Athena and any product returns must be credited to the Company. Where ever possible, the company will look to maximize value by implementing global promotional and support programs that eliminate redundant work (e.g. websites, PR activities, etc.).

In recognition of Morton's past and ongoing efforts, he will receive an initial stock option grant of 25,000 shares, subject to the terms and conditions of that grant, and will be eligible for future annual grants.



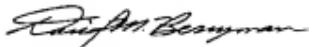
- 1       8. Defendant Silk Road Associates LLC ("SRA") is believed to be a California Limited
- 2       Liability Company owned and operated by Defendant Cordell.
- 3       9. Defendant King Champion (Hong Kong) Ltd. ("King Champion") is a business entity, the
- 4       precise nature of which is currently unknown, with a manufacturing plant located in the
- 5       Shenzhen, People's Republic of China which at all material times has manufactured
- 6       Athena's PMT pursuant to the same "Confidentiality Agreement", for sale to Athena's
- 7       distributors and customers.
- 8
- 9       10. Defendant Simon Fan is an individual resident in Hong Kong, S.A.R. who is the owner or
- 10       one of the owners of Defendant King Champion.
- 11
- 12       11. Defendant Dragon Ventures Ltd is believed to be a fictitious business name owned and
- 13       operated by Defendants Wilkes, Cordell, Fan and, possibly others.
- 14
- 15       12. Defendant Yielding Limited ("Yielding") is a business entity, the precise nature of which is
- 16       currently unknown, located in Hong Kong, S.A.R. and is owned and/or operated by
- 17       Defendant Wilkes, Fan and possibly others.
- 18
- 19       **II.       JURISDICTION AND VENUE**
- 20
- 21       13. The jurisdiction of this court is invoked under 28 USC § 1332 (diversity jurisdiction), in
- 22       that this is an action between citizens of different states of the United States – Plaintiff
- 23       being a citizen of the State of Delaware, and Defendants being citizens of the State of
- 24       Arizona and California, and of a foreign states – People's Republic of China and Hong
- 25       Kong S.A.R..
- 26
- 27       14. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and
- 28       costs.

6. As part of this agreement, Derek and Morton agree to use their best efforts to persuade King Champion to immediately resume manufacturing for Athena, and to continue to manufacture for Athena in the future.

If acceptable, Athena will provide a similar stock option grant to Mr. Simon Fan of King Champion Industries for his commitment to continue producing Athena products on an agreed upon costing formula that can be relied upon by Athena. Such cost-stability will be valuable in helping Athena raise funds.

The Executive Committee will evaluate the success of the above activities and programs at 6 months and 12 months. If the Committee feels that the programs are not meeting their intended goals, or that the Company is unable to raise sufficient capital, it will make recommendations for appropriate actions.

The participant's signatures below attest that each party agrees to move forward accordingly.



David Berryman  
President & CEO, Athena Feminine Technologies, Inc.

Steven Kerkstra  
CFO, Athena Feminine Technologies, Inc.

  
Derek Wilkes

Morton Cordell

Merritt Widen

## **EXHIBIT E**

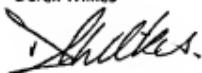
July 26, 2010

Dave Berryman, CEO  
Athena Feminine Technologies, Inc.  
2200 Powell Street  
Emeryville, CA 94608  
Tel: 866 308 4436

This letter confirms the notice to Athena in an email dated July 15, 2010 (copy attached) that the PEX marketing rights licensed to Athena in the letter agreement dated November 14, 2008 (copy attached) have been terminated effective July 15, 2010.

Accordingly, Athena's rights to have PEX products made for its account are also terminated. The effect of these terminations of rights is that Athena no longer may have PEX products made nor may they distribute PEX products. If you hold saleable inventory, you have ninety (90) days from the date of this letter to dispose of same.

Derek Wilkes



1       15. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*,  
2       including 35 U.S.C. § 271. This court has exclusive subject matter jurisdiction pursuant to  
3       28 U.S.C. §§ 1331 and 1338(a).

4       16. Venue is proper in the Northern District of California under 28 USC §§ 1391(c), 1391 (d)  
5       and 1400(b). Plaintiff Athena has its principal place of business in the Northern District of  
6       California, and Defendants Wilkes, Cordell and King Champion entered into  
7       “Confidentiality Agreements”, irrevocably consenting to the exclusive personal jurisdiction  
8       of the Federal and State Courts of the State of California. In addition, Defendant Cordell  
9       resides in this district and Defendant Wilkes has significant contacts in this district.

### 11                   III.    FACTS

12       17. In or about April 17, 2004, Athena and Wilkes entered into a “Confidentiality Agreement”,  
13       a true and correct copy of which is attached hereto as Exhibit B and incorporated herein,  
14       whereby Athena provided Wilkes with certain “Confidential Information” as defined, in  
15       order that Wilkes assist with the manufacture of Athena’s Pelvic Muscle Trainer (“PMT”).  
16       18. The Confidentiality Agreement contains “Non-Disclosure and Non-Use Obligations” on  
17       the part of Wilkes as a Recipient, and contains a provision (¶10) titled “Governing Law and  
18       Forum, Legal Fees” by which each of the parties agrees that the Confidentiality Agreement  
19       is governed in all respects by the laws of the United States of America and by the laws of  
20       the State of California, irrevocably consents to the exclusive personal jurisdiction of the  
21       Federal and State Courts located in California, and in the event of any dispute with respect  
22       of matters covered by the agreement, that the prevailing party in such proceeding shall be  
23       entitled to prevailing parties attorneys fees, expert witness fees and out of pocket costs  
24       incurred in addition to any other relief to which such prevailing party may be entitled.

1       19. The "Confidentiality Agreement" also contains a provision (¶4) stipulating that all  
2       Confidential Information "and any derivatives thereof whether created by Company or  
3       Recipient" remain the property of Athena and no license or other rights to Confidential  
4       Information or derivations is granted or implied. Provision is further made for return to  
5       Athena of all confidential information within five days of request.  
6

7       20. The same "Confidentiality Agreement" was entered into between Athena on the one hand  
8       and Defendants Cordell and Fan on behalf of King Champion, on the other hand in or  
9       about April 2004. The Confidentiality Agreement entered into between Athena and King  
10      Champion is attached hereto as Exhibit C and incorporated herein.  
11

12      21. At various times from and after April 2004, Defendant Wilkes was paid by Athena to  
13      provide consulting and engineering services to Athena to facilitate the manufacture of  
14      Athena's Pelvic Muscle Trainer.  
15

16      22. In or about April 20, 2004, Athena began production of the Pelvic Muscle Trainer at the  
17      plant of Defendant King Champion by providing confidential design and proprietary  
18      information to Defendant King Champion for the purpose of manufacture.  
19

20      23. In or about June 21, 2006, Plaintiff Athena, through Defendants Cordell and SRA, began  
21      sales of its Pelvic Muscle Trainer to distributors in the United Kingdom and elsewhere.  
22

23      24. In or about late 2007, Defendant Wilkes began the design and production of a derivative  
24      product of Athena's PMT, designated by Wilkes as "Personal Exerciser" ("PEX") and re-  
25      named by Athena as "Spirit", using Confidential Information obtained by Defendant  
26      Wilkes pursuant to the "Confidentiality Agreement" entered into with Athena, and with the  
27      knowledge/assistance of Athena's manufacturer, King Champion.  
28

- 1 25. In or about early 2008, Athena discovered that Defendant Wilkes had developed the PEX  
2 and that Defendant Fan had caused King Champion to manufacture and produce a  
3 prototype of the PEX without the knowledge or consent of Athena.
- 4 26. In March and April 2008, King Champion applied for design and utility model patents of  
5 the PEX in China, listing defendant Wilkes as inventor. These patents were later granted in  
6 China on February 18 and September 9, 2009.
- 7 27. Subsequently Defendant Wilkes, with the assistance of Defendant Fan and King Champion  
8 applied for certification or "CE Registration" of the PEX in the European Union with the  
9 intent of selling the PEX to Athena's distributors in competition with, and by way of  
10 replacement of, Athena's PMT.
- 11 28. When Athena made it clear to Wilkes that the PEX was the sole property of Athena,  
12 Wilkes caused Fan and King Champion to threaten to cease manufacture of Athena's  
13 product. Without an alternate manufacturer in place, Athena would effectively have been  
14 out of business. In order to prevent this and to avoid litigation with Wilkes and King  
15 Champion, Athena then entered into discussions with Defendants Wilkes, Cordell, and Fan  
16 with a view to entering into an arrangement by which Defendants would acknowledge that  
17 the PEX was derivative of the PMT and was the product of, and owned by, Athena, that the  
18 PEX would be marketed by Athena in Europe and that Defendant Wilkes would receive  
19 stipulated royalties on the sales of PEX, and a cash bonus and stock options in Athena  
20 upon the occurrence of certain milestones.
- 21 29. On or about November 14, 2008, Athena on the one hand, and Wilkes and Cordell on the  
22 other hand entered into an agreement by which it was acknowledged that the PEX "is  
23 Athena's product" and that "if Athena ceases operations or chooses to no longer market the  
24
- 25
- 26
- 27
- 28

1 PEX, then marketing rights for the PEX will revert back to [Wilkes]". A copy of the  
2 November 14, 2008 Agreement is attached hereto as Exhibit D and incorporated herein.  
3

4 30. Since entering into the mediated Agreement of November 14, 2008, Defendant Wilkes has,  
5 despite demand, and in violation of the "Confidentiality Agreement" refused to return to  
6 Athena drawings, design specifications, code blueprints and other material related to the  
7 design of the PMT and has further refused to provide Athena or its insurance underwriter  
8 with design documents and test results related to the PEX product, required for the  
9 marketing and sale of the PEX product.

10 31. Commencing in or about December 1, 2009, Defendants, by and through Defendant  
11 Yielding applied for a U.S. Trademark for the "Pel-Fit" or "Pel\*Fit" mark with a mark  
12 description of "Electronic Stimulator for pelvic floor muscle."

13 32. Defendants Wilkes, acting individually and upon information and belief, with the aid of  
14 Defendants Cordell, Dragon Ventures Ltd and SRA, have actively interfered with the  
15 manufacture of Athena's PMT and PEX product by Defendant King Champion by causing  
16 King Champion to either cease or delay the production of Athena's product and at the same  
17 time produce PEX product for shipment to or at the direction of Defendant Wilkes.

18 33. Sometime in 2010, Defendant Wilkes, with the assistance of Defendants Fan and King  
19 Champion, produced the PEX product, which he re-named the PelFit, and together with his  
20 wife, Ursula Wilkes, founded Pelfit Technologies LLC in March 2010.

21 34. With the assistance of Defendant Cordell, and his knowledge of Athena's customers, Pelfit  
22 Technologies LLC then contacted Athena's customers and has began selling the Pelfit to  
23 them without the knowledge or consent of Athena.

24

25

26

27

28

- 1 35. Defendants are now actively engaged in the marketing and sale of the PEX product under
- 2 the name of "The Pelfit" to Athena's distributors and/or others in Europe, South America
- 3 and Asia, and have announced their intention to distribute and sell the product in the
- 4 United States, China, Serbia, and the United Kingdom. See <http://www.pelfit.com>.
- 5
- 6 36. Defendant Wilkes now claims ownership of the PEX product and on July 26, 2010 has
- 7 advised Athena in writing that "PEX marketing rights licensed to Athena in the letter
- 8 agreement dated November 14, 2008 (copy attached) have been terminated effective July
- 9 15, 2010". Wilkes' letter of July 26, 2010, a copy of which is attached hereto as Exhibit E
- 10 and incorporated herein, also advises Athena that its rights to have PEX products made for
- 11 its account are terminated and that it may now "not have PEX products made nor may they
- 12 distribute PEX products".
- 13
- 14 37. As a direct result of Wilkes' refusal to return to Athena confidential design and testing
- 15 documents relative to the PMT product, Wilkes' refusal to provide Athena with design and
- 16 testing documents relative to the PEX product, Wilkes' interference with Athena's
- 17 relationship with its manufacturer, Wilkes' claim of ownership of the PEX product, and
- 18 Wilkes' production and sale of the PEX product under the name of the Pelfit, Athena's
- 19 sales have declined and ceased for 4 months, at a time of expected peak sales.
- 20
- 21 38. As a result of Defendant Wilkes' conduct and King Champion's intentional delay in the
- 22 production and delivery of Athena's products, Athena was forced to secure a new
- 23 manufacturer at substantial cost and investment of time.
- 24
- 25 39. Athena has suffered and will continue to suffer substantial damages, and has suffered and
- 26 will continue to suffer irreparable damage for which Athena is entitled to and hereby seeks
- 27 injunctive relief.
- 28